

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RHONDA ANN FLEMING

Petitioner,

v.

FCI- DUBLIN WARDEN,

Respondent.

Case No. 23-cv-00017 NC (PR)

ORDER OF TRANSFER

This federal habeas action, in which petitioner is challenging “the validity of [her] conviction or sentence,” Dkt. No. 1 at 2, is TRANSFERRED to the United States District Court for the Southern District of Texas, as that is the district of conviction. *See* 28 U.S.C. §§ 1404(a), 2241(d); Habeas L.R. 2254-3(b).

Typically, 28 U.S.C. § 2241 is used to review the execution of a federal sentence, rather than the sentence itself. *See, e.g., United States v. Giddings*, 740 F.2d 770, 772 (9th Cir. 1984) (presentence time credit claim). Under limited circumstances, a federal prisoner may use 28 U.S.C. § 2241 to collaterally attack a conviction or sentence. *See* 28 U.S.C. § 2255(e) (known as the “escape hatch” provision). However, this “escape hatch” only

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1 applies when the prisoner “(1) makes a claim of actual innocence, and (2) has not had an
2 unobstructed procedural shot at presenting that claim.” *Marrero v. Ives*, 682 F.3d 1190,
3 1192 (9th Cir. 2012).

4 Here, petitioner states on the face of the petition that she is challenging “[t]he
5 validity of [her] conviction or sentence,” rather than the execution thereof. *See* Pet. at 2.
6 As relief, she asks for her conviction to be vacated. *See id.* at 7. However, petitioner
7 argues not that she needs to proceed under the “escape hatch,” but rather that her
8 conviction is unconstitutional based on an intervening change in the law. *See id.* at 2, 5.
9 Accordingly, the instant petition properly should be filed before the United States District
10 Court for the Southern District of Texas, and/or the United States Court of Appeals for
11 the Fifth Circuit. *See* 28 U.S.C. § 2255(h)(2) (providing that a petitioner may seek
12 permission from “the appropriate court of appeals” to file “[a] second or successive
13 motion” for relief from conviction, based on “a new rule of constitutional law, made
14 retroactive to cases on collateral review by the Supreme Court, that was previously
15 unavailable”).

16 The Clerk is directed to transfer this matter forthwith.

17 **IT IS SO ORDERED.**

18 DATED: February 3, 2023

19 

20 NATHANAEL M. COUSINS
21 United States Magistrate Judge